IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

WA.No. 3014 of 2001(B)

AGAINST THE JUDGEMENT IN OP.19960/2000 Dated 26/06/2001
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APPELLANT: PETITIONER

DR. PETER JOHN, KODIYIL HOUSE,
HOUSE NO.XXXII/1765, PALARIVATTOM,
EDAPPALLY P.O., KOCHI-682 024.

BY ADV. SRI.P.K.ASHOKAN
SRI.M.B.PRAJITH

RESPONDENTS: RESPONDENTS
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1. GOVERNMENT OF KERALA REPRESENTED BY THE SECRETARY, DEPARTMENT OF HEALTH, TRIVANDRUM.

2. THE DIRECTOR OF HEALTH SERVICES, TRIVANDRUM.

3. THE DISTRICT COLLECTOR, ERNAKULAM.

4. THE COMMISSIONER OF POLICE, KOCHI.

5. THE COMMISSIONER, CORPORATION OF KOCHI, KOCHI.

6. DR. AJITH BHASKAR, DIRECTOR, DHANYA NURSING HOME, XXXII/1766, CIVIL LINE ROAD, PALARIVATTOM, KOCHI-682 024.

ADDL.RESPONDENT NO.7 IS IMPLEADED VIDE ORDER DT. 30.5.2006 IN IA 1194/05.

ADDL.R7. STATE MENTAL HEALTH AUTHORITY, THIRUVANANTHAPURAM.

R1 TO 5 & 7 BY SPECIAL GOVERNMENT PLEADER SRI C.T.RAVIKUMAR.
R6 BY ADV. SRI.S.RAJEEV
SMT.I.SHEELADEVI
SRI.V.V.SIDHARTHAN
SRI.M.CHANDRASEKHARAN
SRI.T.K.SHAJAHAN
SRI.M.L.ABRAHAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 26/07/2007,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A.No.3014 of 2001-B

Dated, this the 26th day of July, 2007

JUDGMENT

K.T.SANKARAN, J.

The writ appeal is filed by the petitioner in O.P.No.19960 of 2000. The writ petition was filed by one doctor against another doctor, namely, the 6th respondent, complaining that the 6th respondent is running a hospital without any licence or registration. The reliefs prayed for in the writ petition are the following:

> "i. to issue a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to take immediate necessary action to close down the hospital under the name and style `Dhanya Nursing Home' being conducted by R6 without any proper licence from the Government as contemplated under the Mental Health Act, 1987.
>
> ii. to direct the respondents to take necessary action against R6 for conducting a hospital for mentally ill patients without adhering to the conditions laid down under the Mental Health Act, 1987.
>
> iii. To direct the respondents to stop the functioning of the hospital, pending disposal of the original petition.
> and
> iv. to grant such other reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case."

2. It was contended that a representation was submitted by the petitioner to the Mayor of the Corporation of Kochi as Ext.P1 to which a reply was received by him as Ext.P2. The contention of the petitioner is that before starting the hospital the 6th respondent has not taken out any licence as provided in the

Mental Health Act and that the hospital is being run in only 12 cents of land and the building is only a residential building.

3. The 6th respondent filed a counter affidavit stating that he has not violated any of the provisions of the Municipalities Act or the Mental Health Act. He contended that he has been practising and conducting the clinic under the name and style `Dhanya Doctor's Chamber'. He applied for the licence for the establishment of a psychiatric nursing home in accordance with the provisions of the Mental Health Act. The application was not disposed of. It is also contended by the 6th respondent that since necessary rules have not been framed under the Mental Health Act, none of the mental hospitals or nursing homes in the State were being given licence under the Mental Health Act.

4. The learned Single Judge after considering the contentions put forward by the parties, came to the following conclusion:

> "It is the case of the petitioner that for establishing a hospital for mentally ill patients licence has to be obtained under the Mental Health Act and the Government has constituted an authority to decide whether licence should be granted to such institutions. According to the 6th respondent, he has already applied for licence and no order is passed on his application. The petitioner has not impleaded the authority constituted under the Mental Health Act in this original petition. The petitioner has also not brought to the notice of the authority constituted under the Mental Health Act, the actions of the 6th respondent for violating the provisions of the Mental Health Act. Since the 6th respondent has obtained licence from the Cochin Corporation and since the State Mental Health Authority has not so far implemented the licensing rules for Mental Health Nursing Homes and the 6th respondent has been running the nursing home from 1990

> onwards, it is not possible for this court to grant the prayers of the petitioner for a direction to close down "Dhanya Nursing Home" conducted by the 6th respondent.
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> In the light of the above discussion, I do not find any merit in the original petition and the same is dismissed. It is further made clear that the petitioner is free to approach the State Mental Health Authority for redressal of his grievance and also the Civil Court if the 6th respondent causes any nuisance to the petitioner by his actions as the disputed questions of facts cannot be decided in a writ petition."

5. In the writ appeal the 6th respondent has produced certain additional documents as Annexures R6(a) to (e). Annexure R6(a) is a registration certificate issued by the Corporation of Kochi under the Kerala Municipality (Registration of Private Hospitals and Private Paramedical Institutions) Rules, 1997 to the 6th respondent for the period ending the financial year 2001-02. This was being renewed from time to time and Annexure R6(c) shows that it was renewed for the year 2005-06. The 6th respondent has submitted an application before the Kerala State Mental Health Authority requesting them to issue the necessary certificate for running the hospital. Annexure R6(e) shows that the application has been acknowledged by the authority. The application filed by the 6th respondent has not been disposed of so far.

6. Since disputed questions of facts are involved and since the authorities under the Mental Health Act as well as the Kerala Municipality (Registration of Private Hospitals and Private Paramedical Institutions) Rules, 1997 have not taken any decision in the matter of either canceling the registration or taking action against the 6th respondent and particularly when the authority under the

Mental Health Act has not even disposed of the application filed by the 6th respondent for granting registration, the learned Single Judge, according to us, was fully justified in passing the judgment impugned whereby the rights of the petitioner are well protected.

In the facts and circumstances of the case we do not think that any interference is called for in the decision taken by the learned Single Judge. The writ appeal is accordingly dismissed leaving open the remedies available to the petitioner/appellant by approaching the appropriate forum/court or other authority for the redressal of his grievances. The writ appeal is disposed of as above.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

W.A.No.3014 of 2001

JUDGMENT

26.7.2007